

DECISION

11936 PLI
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-196431

DATE: November 5, 1979

MATTER OF: Alco Tool & Manufacturing Company

[Protest of Agency Decision to Resolicit Bids]
DIGEST:

Protest sent by certified mail and received more than 10 working days after date of initial adverse agency action (letter denying protest) is untimely and not for consideration on merits as postmark indicates letter was sent less than 5 days prior to final date for filing.

✓ Alco Tool & Manufacturing Company (Alco) protests the decision by the Defense Logistics Agency (DLA), Defense Contract Services Region, Dallas, Texas, to resolicit bids for an estimated 6,500 pounds of aluminum being sold as scrap in connection with contract No. F41608-76-D-0014. ✓

✓ DLA had authorized Alco to solicit bids for eight line items of scrap material it had in its possession. Among these items was the 6,500 pounds of aluminum mentioned above. The high bidder on this item was the Yaffe Iron and Metal Company, Inc. (Yaffe), with a bid of \$00.28452 per pound. The only other bid was submitted by Alco at \$00.07 per pound. Yaffe was notified that it was the successful bidder, but it failed to take any steps to complete the purchase. Finally, Yaffe informed Alco that it was canceling the sale. Alco then notified DLA of this development and indicated that as the second high bidder it was now entitled to the award. Upon reviewing the situation, DLA concluded that Yaffe could refuse to complete the purchase because it had not entered into a binding contract. However, DLA refused to make an award to Alco because it considered the price of \$00.07 per pound to be unrealistic in view of the current market price for this type of scrap. It then advised Alco to resolicit the item. But, by letter of September 6, 1979, Alco filed a protest with the Agency arguing

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Contracting procedures
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Contract awarded
procurement
protests
Untimely bid-protest

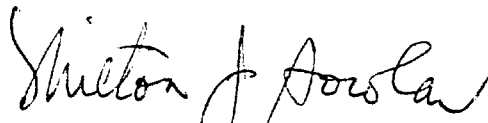
that, regardless of the current market price for aluminum scrap, as second high bidder it was entitled to the award. However, by letter dated September 19, 1979, received by Alco on September 21, DLA denied the protest. Alco filed a subsequent protest with our Office on October 12, 1979, sending its letter by certified mail.

Section 20.2(a) of our Bid Protest Procedures, 4 C.F.R. part 20 (1979), states in pertinent part:

"Protesters are urged to seek resolution of their complaints initially with the contracting agency. If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 [working] days of formal notification of or constructive knowledge of initial adverse agency action will be considered * * *."

Here, Alco's protest was not filed (received) in our Office until more than 10 working days after the Agency had denied its protest. While section 20.2(b)(3) of our Procedures provides that an untimely filed protest may be considered where sent by certified mail if sent not later than the fifth day prior to the final date for filing, the United States Postal Service postmark of October 3, 1979, indicates Alco's certified letter was sent less than 5 days before that date. Consequently, the untimely filed protest may not be considered on the merits. R. B. S., Inc., B-194514, April 24, 1979, 79-1 CPD 286.

Protest dismissed.



Milton J. Socolar
General Counsel